

# O'CONNOR CAVANAGH

Phoenix, Arizona  
June 1, 1999

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May 28, 1999

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File No. 24116-100

Office of the Secretary  
Federal Communications Commission  
Portals Building  
445 12<sup>th</sup> Street S.W.  
Washington, D.C. 20554

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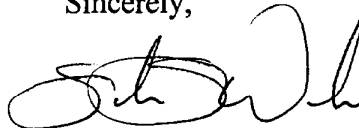
**Re: Overcoming Obstacles to Telephone Service on Indian Reservations;  
DA 99-430; BO Docket No. 99-11**

Ladies and Gentlemen:

Enclosed please find the comments of Gila River Telecommunications, Inc. with regard to the matter listed above.

Should you have any questions or concerns, please do not hesitate to call me.

Sincerely,



Sarah S. Works  
For the Firm

SSW:elk  
Enclosure  
cc: Darrell Gerlaugh, Chairman  
GRTI Board of Directors (w/enc.)

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**OVERCOMING THE OBSTACLES TO TELEPHONE SERVICE  
FOR INDIANS ON RESERVATIONS**

**DA 99-430  
BO Docket No. 99-11**

**COMMENTS OF  
GILA RIVER TELECOMMUNICATIONS, INC.  
TO THE FEDERAL COMMUNICATIONS COMMISSION**

**SUBMITTED MAY 28, 1999**

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**I. Introduction**

Gila River Telecommunications, Inc. ("GRTI") was established on July 6, 1988 for the purpose of providing the Gila River Indian Community with telecommunication services. The Gila River Indian Community is home to over 12,000 tribal members and is located south of Phoenix, Arizona. GRTI, a tribal corporation 100% owned and operated by the Gila River Indian Community, is the sole provider of telecommunication services for on-reservation households. Approximately 1,232 residences on the Gila River Indian Reservation have telephone services. This means that only 34% of reservation households have telephone service.

On March 23, 1999, the Gila River Indian Community welcomed the FCC to the Reservation for a public hearing. Governor Mary Thomas of the Gila River Indian Community testified at that hearing and submitted a written response to questions posed by the FCC prior to the hearing. GRTI hereby submits additional comments intended to supplement the testimony and written responses submitted by Governor Thomas.

**II. Problems Facing The Gila River Indian Community**

Before GRTI was established, telephone service on the reservation was virtually non-existent. Few people had household phone service, so many tribal members had to rely on other sources. Tribal members could obtain telephone service under extremely limited circumstances

after paying high connection fees. For example, one tribal member remembers accessing phone service by attending church and then proceeding to the nuns' convent to call his relatives on the Navajo Reservation. After he was done with his call, there would be a line of people outside of the convent waiting to use the phone to call their relatives.

About twenty-five years ago, a tribal member paid eight hundred dollars for a phone line to his home. U.S. West agreed to install the line because he was an ambulance driver for the Community. It was the only telephone in the entire community of Goodyear.

The former Governor of the Community had similar problems prior to the establishment of GRTI. In 1984, Governor Thomas White lacked telephone service due to the high installation costs from U.S. West. The nearest cable to his house was 7,000 feet from his home and it would have cost him \$7,000 to connect telephone service. Governor White was not able to obtain telephone service until GRTI offered connection services to Community members at no cost.

The world changed dramatically for many tribal members once GRTI was established. GRTI's first customers were connected to phone service in 1989. The first connection made by GRTI was between two homes that were approximately 1/8 mile apart. With this connection, the two households could only call each other. While this might appear to some to be a minor achievement, it was an historic moment for the Gila River Indian Community, as it established GRTI as a functioning telephone company able to serve the Reservation.

In 1992, GRTI connected a small community of 16 homes. These households had never previously enjoyed access to residential telephone service. Therefore, this was a big event for this community. The families involved were so happy to have contact with the rest of the world that they threw a block party for GRTI to show their appreciation.

While GRTI is proud of its efforts and accomplishments with regard to connecting the Reservation to the rest of the world through telephone service, the great majority of tribal members still lack household telephone service. As stated above, only 34% of households on the Reservation have telephone service. Because most tribal members have gone without telephone services for their entire lives, many do not realize the necessity of such service until it is too late. Further, the economic reality of life on the Reservation makes it difficult for tribal members to consistently pay for telephone service, even when that service is provided at discounted rates.

In one situation, a tribal member was involved in a bad accident in Phoenix, but no one was able to contact the tribal member's family on the Reservation. A person on the scene had a telephone and knew who lived nearby the injured tribal member's family. The neighbors were called and asked to get a message to the family who lived about two miles away. Fortunately, the message was delivered, but the lack of telephone service created problems that people living off the reservation can hardly imagine. A year later the family was connected to telephone service.

Another family had a near death emergency in 1991 in which one tribal member was involved in a very bad car accident. After emergency crews left the scene, a telephone was needed to find out where the tribal member had been taken by the emergency helicopter. The family had recently received residential phone services from GRTI which allowed them to quickly locate the injured family member. If they had not yet been connected, they would have been forced to travel a mile away to the nearest relative with a telephone.

Because most tribal elders have never had telephone service, they simply do not see the need for it. As with any aging population, though, telephone service is a basic necessity for safety and communication with family members. One tribal elder who lived in a remote area

was not able to obtain either telephone service or electricity because of the high connection costs. The lack of phone service made it very difficult for her children to check in with her to make sure everything was alright. Because of her age, her children were worried about her all the time. Eventually, the children assisted her with a move to a planned community for the elderly where she could receive telephone service. Now they are able to check on her on a daily basis. If she does not answer her phone, the children can call her neighbors to find out where she is and to make sure she is alright.

GRTI has found that establishing service in a new area is quite costly. It is very expensive to connect first time customers, and GRTI must bear the burden of that expense. The capital requirements necessary to establish telephone service throughout the Reservation are very great. Because of these start-up expenses, telephone service to the Reservation cannot be expected to be profitable in the near future. Additionally, the all-too-frequent low income levels of tribal members do not allow GRTI to charge high rates that could absorb the initial costs of necessary capital expenditures. For these reasons, traditional models of profit-based economic development simply do not apply to the development of telephone service for tribal members living on Indian reservations.

These are the economic reasons why no private telephone company has chosen to provide complete or adequate telephone service to the Reservation. It is important for tribes to build and maintain their own telephone companies to address these unique problems. The hope for telephone access to Reservation households rests with GRTI. The FCC can assist GRTI with its mission by recognizing the value of tribally owned telephone companies and supporting the principles of tribal sovereignty.

### III. Need For A Government-to-Government Relationship With The FCC.

In order to foster and facilitate the development of telephone companies that are owned and operated by Indian tribes, GRTI requests that the FCC establish a policy that recognizes the sovereign status of tribal governments. The establishment of an FCC Indian policy is necessary to implement President Clinton's May 14, 1998 Executive Order, "Consultation and Coordination With Indian Tribal Governments," and his May 4, 1994 Executive Order, "Government-to-Government Relations With Native American Tribal Governments," copies of which are attached hereto. When no special efforts are made to consider the impact that policies may have on tribes, tribes are often ignored or left out of policy decisions that have significant impacts on Indian communities.

For example, the FCC established the Public Safety National Plan in 1987. This Plan designated the geographic boundaries of the state of Arizona as Region 3. In 1991, Arizona Region 3 submitted a Regional Plan to the FCC for review. Few, if any, tribal governments were involved in the review process, which was conducted by State of Arizona Public Safety representatives. As a result, Native American communities in Arizona Region 3 did not receive an allocation of the emergency radio frequencies available pursuant to the Public Safety National Plan. The Gila River Indian Community has a great need for additional emergency frequencies and is currently attempting to remedy the situation. However, no remedy would be necessary if efforts had been made to involve Indian tribes in the initial acquisition process.

Thus, an Indian policy is necessary to ensure that tribes will not be locked out or left out of future policy decisions that affect tribal lands and the reservation populace. The objective of the proposed policy is to ensure that, prior to making decisions that affect Indian tribes and tribal lands, the FCC consults with the relevant tribal government and assesses the impact that any

decision will have on tribal lands and the reservation population. To meet this objective, GRTI suggests that the FCC adopt an Indian policy that incorporates the following principles:

1. The FCC will work directly with Indian tribal governments on a one-to-one basis (the Government-To-Government Relationship), rather than as subdivisions of other governments.
2. The FCC will recognize tribal governments as sovereign entities with primary authority and responsibility for the reservation populace. Accordingly, FCC will work directly with tribal governments as the independent authority for reservation affairs, and not as political subdivisions of States or other governmental units.
3. The FCC will take affirmative steps to encourage and assist tribes in establishing and maintaining telephone service for the reservation populace.
4. The FCC will take appropriate steps to remove existing legal and procedural impediments to working directly and effectively with tribal governments with regard to activities that involve tribal lands or the reservation populace.
5. In keeping with the federal trust responsibility, the FCC will assure that tribal concerns and interests are considered whenever FCC actions or decisions may affect tribal lands or the reservation populace.
6. The FCC will work with other federal agencies that have related responsibilities on Indian lands to enlist their interest and support in cooperative efforts to help tribes develop and maintain telephone service for the reservation populace.
7. The FCC will incorporate these Indian policy goals into its planning and management activities, including its budget, operating guidance, legislative initiatives, management accountability system and ongoing policy and regulation development processes.

## THE WHITE HOUSE

Office of the Press Secretary  
(Birmingham, England)

For Immediate Release

May 14, 1998

## EXECUTIVE ORDER

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CONSULTATION AND COORDINATION  
WITH INDIAN TRIBAL GOVERNMENTS

The United States has a unique legal relationship with Indian tribal governments as set forth in the Constitution of the United States, treaties, statutes, Executive orders, and court decisions. Since the formation of the Union, the United States has recognized Indian tribes as domestic dependent nations under its protection. In treaties, our Nation has guaranteed the right of Indian tribes to self-government. As domestic dependent nations, Indian tribes exercise inherent sovereign powers over their members and territory. The United States continues to work with Indian tribes on a government-to-government basis to address issues concerning Indian tribal self-government, trust resources, and Indian tribal treaty and other rights.

Therefore, by the authority vested in me as President by the Constitution and the laws of the United States of America, and in order to establish regular and meaningful consultation and collaboration with Indian tribal governments in the development of regulatory practices on Federal matters that significantly or uniquely affect their communities; to reduce the imposition of unfunded mandates upon Indian tribal governments; and to streamline the application process for and increase the availability of waivers to Indian tribal governments; it is hereby ordered as follows:

Section 1. Definitions. For purposes of this order:

(a) "State" or "States" refer to the States of the United States of America, individually or collectively, and, where relevant, to State governments, including units of local government and other political subdivisions established by the States.

(b) "Indian tribe" means an Indian or Alaska Native tribe, band, nation, pueblo, village, or community that the Secretary of the Interior acknowledges to exist as an Indian tribe pursuant to the Federally Recognized Indian Tribe List Act of 1994, 25 U.S.C. 479a.



(c) "Agency" means any authority of the United States that is an "agency" under 44 U.S.C. 3502(1), other than those considered to be independent regulatory agencies, as defined in 44 U.S.C. 3502(5).

Sec. 2. Policymaking Criteria. In formulating policies significantly or uniquely affecting Indian tribal governments, agencies shall be guided, to the extent permitted by law, by principles of respect for Indian tribal self-government and sovereignty, for tribal treaty and other rights, and for responsibilities that arise from the unique legal relationship between the Federal Government and Indian tribal governments.

Sec. 3. Consultation. (a) Each agency shall have an effective process to permit elected officials and other representatives of Indian tribal governments to provide meaningful and timely input in the development of regulatory policies on matters that significantly or uniquely affect their communities.

(b) To the extent practicable and permitted by law, no agency shall promulgate any regulation that is not required by statute, that significantly or uniquely affects the communities of the Indian tribal governments, and that imposes substantial direct compliance costs on such communities, unless:

(1) funds necessary to pay the direct costs incurred by the Indian tribal government in complying with the regulation are provided by the Federal Government; or

(2) the agency, prior to the formal promulgation of the regulation,

(A) in a separately identified portion of the preamble to the regulation as it is to be issued in the Federal Register, provides to the Director of the Office of Management and Budget a description of the extent of the agency's prior consultation with representatives of affected Indian tribal governments, a summary of the nature of their concerns, and the agency's position supporting the need to issue the regulation; and

(B) makes available to the Director of the Office of Management and Budget any written communications submitted to the agency by such Indian tribal governments.

Sec. 4. Increasing Flexibility for Indian Tribal Waivers.

(a) Agencies shall review the processes under which Indian tribal governments apply for waivers of statutory and regulatory requirements and take appropriate steps to streamline those processes.

(b) Each agency shall, to the extent practicable and permitted by law, consider any application by an Indian tribal government for a waiver of statutory or regulatory requirements in connection with any program administered by that agency with a general view toward increasing opportunities for utilizing flexible policy approaches at the Indian tribal level in cases in which the proposed waiver is consistent with the applicable Federal policy objectives and is otherwise

appropriate.

(c) Each agency shall, to the extent practicable and permitted by law, render a decision upon a complete application for a waiver within 120 days of receipt of such application by the agency. The agency shall provide the applicant with timely written notice of the decision and, if the application for a waiver is not granted, the reasons for such denial.

(d) This section applies only to statutory or regulatory requirements that are discretionary and subject to waiver by the agency.

Sec. 5. Cooperation in developing regulations. On issues relating to tribal self-government, trust resources, or treaty and other rights, each agency should explore and, where appropriate, use consensual mechanisms for developing regulations, including negotiated rulemaking.

Sec. 6. Independent agencies. Independent regulatory agencies are encouraged to comply with the provisions of this order.

Sec. 7. General provisions. (a) This order is intended only to improve the internal management of the executive branch and is not intended to, and does not, create any right, benefit, or trust responsibility, substantive or procedural, enforceable at law or equity by a party against the United States, its agencies or instrumentalities, its officers or employees, or any other person.

(b) This order shall supplement but not supersede the requirements contained in Executive Order 12866 ("Regulatory Planning and Review"), Executive Order 12988 ("Civil Justice Reform"), OMB Circular A-19, and the Executive Memorandum of April 29, 1994, on Government-to-Government Relations with Native American Tribal Governments.

(c) This order shall complement the consultation and waiver provisions in sections 4 and 5 of the Executive order, entitled "Federalism," being issued on this day.

(d) This order shall be effective 90 days after the date of this order.

WILLIAM J. CLINTON

THE WHITE HOUSE,  
May 14, 1998.

1ST DOCUMENT of Focus printed in FULL format.

FEDERAL REGISTER  
VOL. 59, No. 85

Presidential Documents

PRESIDENT OF THE UNITED STATES

Memorandum of April 29, 1994

Title 3-  
The President  
Government-to-Government Relations With Native American Tribal  
Governments

59 FR 22951

DATE: Wednesday, May 4, 1994

ACTION: Memorandum for the Heads of Executive Departments and Agencies

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The United States Government has a unique legal relationship with Native American tribal governments as set forth in the Constitution of the United States, treaties, statutes, and court decisions. As executive departments and agencies undertake activities affecting Native American tribal rights or trust resources, such activities should be implemented in a knowledgeable, sensitive manner respectful of tribal sovereignty. Today, as part of an historic meeting, I am outlining principles that executive departments and agencies, including every component bureau and office, are to follow in their interactions with Native American tribal governments. The purpose of these principles is to clarify our responsibility to ensure that the Federal Government operates within a government-to-government relationship with federally recognized Native American tribes. I am strongly committed to building a more effective day-to-day working relationship reflecting respect for the rights of self-government due the sovereign tribal governments.

In order to ensure that the rights of sovereign tribal governments are fully respected, executive branch activities shall be guided by the following:

(a) The head of each executive department and agency shall be responsible for ensuring that the department or agency operates within a government-to-government relationship with federally recognized tribal governments.

(b) Each executive department and agency shall consult, to the greatest extent practicable and to the extent permitted by law, with tribal governments prior to taking actions that affect federally recognized tribal governments. All

such consultations are to be open and candid so that all interested parties may evaluate for themselves the potential impact of relevant proposals.

(c) Each executive department and agency shall assess the impact of Federal Government plans, projects, programs, and activities on tribal trust resources and assure that tribal government rights and concerns are considered during the development of such plans, projects, programs, and activities.

(d) Each executive department and agency shall take appropriate steps to remove any procedural impediments to working directly and effectively with tribal governments on activities that affect the trust property and/or governmental rights of the tribes.

(e) Each executive department and agency shall work cooperatively with other Federal departments and agencies to enlist their interest and support in cooperative efforts, where appropriate, to accomplish the goals of this memorandum.

(f) Each executive department and agency shall apply the requirements of Executive Orders Nos. 12875 ("Enhancing the Intergovernmental Partnership") and 12866 ("Regulatory Planning and Review") to design solutions and tailor Federal programs, in appropriate circumstances, to address specific or unique needs of tribal communities. [\*22952]

The head of each executive department and agency shall ensure that the department or agency's bureaus and components are fully aware of this memorandum, through publication or other means, and that they are in compliance with its requirements.

This memorandum is intended only to improve the internal management of the executive branch and is not intended to, and does not, create any right to administrative or judicial review, or any other right or benefit or trust responsibility, substantive or procedural, enforceable by a party against the United States, its agencies or instrumentalities, its officers or employees, or any other person.

The Director of the Office of Management and Budget is authorized and directed to publish this memorandum in the Federal Register.

/s/ WILLIAM J. CLINTON

THE WHITE HOUSE,

Washington, April 29, 1994.

Editorial note: For the President's remarks to American Indian and Native Alaska tribal leaders, see the Weekly Compilation of Presidential Documents (vol. 30, issue 18)

[FR Doc. 94-10877 Filed 5-2-94; 3:49 pm]

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